IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 91 of 1998

with

CRIMINAL APPEAL No 117 of 1998

with

CRIMINAL APPEAL No 118 of 1998

For Approval and Signature:

HON'BLE MR.JUSTICE R.P.DHOLAKIA
and
HON'BLE MR.JUSTICE SHARAD D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RAJESH NANJI SATRA

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Appeal No. 91 of 1998

MR SAURIN A SHAH for Appellant No.

PUBLIC PROSECUTOR for Respondent No. 1

2. Criminal Appeal No. 117 of 1998

PUBLIC PROSECUTOR for Appellant No.
NOTICE SERVED for Respondent No. 1

3. Criminal Appeal No. 118 of 1998
PUBLIC PROSECUTOR for Appellant No.
NOTICE SERVED for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE R.P.DHOLAKIA
and
HON'BLE MR.JUSTICE SHARAD D.DAVE

Date of decision: 03/09/2004

COMMON ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE SHARAD D.DAVE)

#. Criminal Appeal No.91 of 1998 has been preferred by the accused under Section 374 of the Criminal Procedure Code, 1973 against the judgment and order dated 09.12.1997 passed in Sessions Case No.63 of 1996 by the Additional Sessions Judge, Kutch-Bhuj convicting the appellant-accused for the offence punishable under Sections 397 of the Indian Penal Code and sentenced him to undergo rigorous imprisonment for 7 years and fine of Rs.500/-, in default, simple imprisonment for three months, and for the offence punishable under Section 304(I) rigorous imprisonment for 7 years and fine of Rs.500/-, in default, simple imprisonment for three months and for the offence punishable under Section 449 rigorous imprisonment for 3 years and fine of Rs.500/-, in default, simple imprisonment for three months. Whereas Criminal Appeal No.117 of 1998 has been filed by the State for enhancement of sentence and Criminal Appeal No.118 of 1998 has been filed by the State against the acquittal of the accused under section 302 of the Indian Penal Code.

#. The short facts of the case are that on 6.4.96 when one Shri Ratansinh Dahyabhai Satra (complainant) gone to Kakarva village for attending a programme and from there in order to meet his mother-in-law gone to Manfara village, at about 6.00 p.m. to 6.30 p.m., one Shri Prabhulal Harjivan Thakkar in his Ambassador Car met the complainant herein and informed him that his wife has received injury on the head and she has been taken to Rapar Hospital. It is further the case of the prosecution that thereafter the complainant sat in the ambassador car of the said person and reached Rapar hospital and saw that his wife was lying unconscious and a serious injury was there on her head. It is further

the case of prosecution that on account of the advise of the doctor to go to Rajkot hospital for further treatment the complainant herein alongwith one Shri Vadilal Ratansinhbhai & Other, had gone by Ambassador car to Rajkot Hospital and on the way, the complainant noticed that the ornaments daily put on by his wife Budhiben (deceased) were not there and therefore the complainant also brought it to the knowledge of one Shri Vadilalbhai. It is further the case of the prosecution that at Rajkot the complainant's wife while undergoing treatment succumbed to the injuries at about 3.15 a.m. It is the further the case of the complainant that after the completion of police formalities and post-mortem being performed, the complainant brought the body of her wife to the village and performed the last ritual. Thereafter, the complainant entered his house and on examination of the house, found that ornaments and cash worth Rs.29,000/- in all were missing from the house. It is further the case of prosecution that before about 2 days of the incident, the appellant had come to the house of complainant herein as he was invited for dinner and after that had gone to the house of her aunt Maniben for sleeping. It is further the case that the appellant had been driven out from his house by his father as he was on a wrong path and the complainant herein therefore had not permitted the appellant herein to sleep in their house after the dinner. It is further the case of prosecution that after coming from Rajkot Hospital, one Shri Ratansinh Bhimji Chawla and Karsanbhai informed the complainant herein that yesterday night Devjibhai from Bachau had called up and informed that while making inquiries from appellant, certain ornaments were found from the suit case. The appellant escaped, however, ornaments which were found missing were lying in the suit case.

#. At the end of investigation, charge sheet was submitted before the learned J.M.F.C., at Rapar, Kutch. As the offences were exclusively triable by the Court of Sessions, the case was committed to the Sessions Court, Kutch-Bhuj which was numbered as Sessions Case No.63 of 1996 and charge was framed against the accused. As the accused pleaded not guilty and prayed for trial, the prosecution examined oral witnesses and also placed reliance on the documents, i.e. P.W.1 Dr.Shailendranath Shatrudhan Singh, Exh.8 Initial treatment administered to deceased, P.W.2 Anwar Shivjibhai Khoja, Circle Officer. Exh.9 Map of scene of incident, P.W.3 Ratanshi Daya Satra - complainant, Exh.11, P.W.4 Karsanbhai Hirjibhai, Exh.12 Nephew of complainant, P.W.5 Shantilal Karsan Satra, Exh.13, P.W.6 Haniben Karsanbhai, Exh.14 Neighbour

of complainant, P.W.7 Muljibhai Velji Gala, Exh.15, Manager of Bachau Jain Oshwal Dharamshala, P.W.8 Damji Lalji Nagda, Exh.18 Rector of Bachau Jain Boarding, P.W.9 Devshi Khakhan Nandu, Exh.19 Trustee of Bachau Jain Oshwal Dharamshala & President of Bachau Jain Boarding, P.W.10 Hanshrajbhai Narbheram Soni, Exh.20 Goldsmith of Handvi Chowk, Bachau, P.W.11 Dr.Rameshchandra Ratilal Doshi, Exh.22 Medical Officer at Rapar Civil Hospital, deceased was taken immediately to said person, P.W.12 Jomabhai Kasambhai Panch Witness of Scene of incident, P.W.13 Hasmukh Natwarlal Joshi, Exh.24 Panch Witness Hostile Witness - Seizure of Bag, P.W.15 Kangar Narangar Exh.26 Panch Witness - Hostile Witness, identification of muddamal ornaments by complainant, P.W.16 Mahipatsinh Takhatsinh, Exh.27 Panch Witness - Discovery Panchnama Weapon 'Dhoka' found with bloodstain used in offence discovered at instance of accused, P.W.17 Aheyshansingh Sardar, Exh.28 Key Maker, P.W.18 Shital Chandrakant Shah, Exh.29 - Booking Clerk of Hali Travels, P.W.19 Balvirsinh Hetram Yadav, Exh.31 Head Constable, Bachau Police Station, P.W.20 Velgar Shamgar, Exh.32 P.S.O. Rapar Police Station recorded Vardhi given by Dr.Singh, P.W.21 Steefan Stanling, Exh.35 - Receptionist of V.R.P. Guest House, P.W.22 Laxman Bhagwat Shinde, Exh.44 - Panch Witness - Production and seizure of ring, P.W.23 Gajubha Natubha, Exh.45 Panch Witness Identification of ring by complainant, P.W.24 Ravjibhai Shambhubhai, Exh.46 - Bag in question purchased from his shop, P.W.25 Shila Halesh, Exh.53 Previously working in Palace Hotel from whom police took ring which accused gave, P.W.26 Kanaji Naranji Solanki, Exh.54 P.S.I.Rapar Police Station, P.W.27 Dr.Lalubhai Channabhai Chavda, Exh.69 Performed and prepared post mortem report.

#. On completion of the same, further statement of the accused under Section 313 of the Criminal Procedure Code was recorded and after hearing the learned counsel for the respective parties, the learned Additional Sessions Judge, Kutch - Bhuj passed the judgment and order as stated above.

#. Heard the learned counsel for the respective parties.

#. Firstly, it has been contended by the learned counsel for the accused - appellant that the case is based on circumstantial evidence and it is the oral evidence of Maniben Karsanbhai PW 6 - Exh.14 that at about 11.30 a.m. the appellant had come to their locality and he was going towards the house of the complainant, and, therefore, merely on the basis of above referred deposition of PW 6, the accused cannot be linked with the crime in question

and, thus, the evidence of PW 5 and 6 does not inspire confidence and there is no other material on record to involve the appellant in the crime in question.

#. It has been also argued by Mr.Shah that the learned trial Judge has also ignored the material fact that the house was locked from inside and the said aspect is clearly reflected from testimony of one Shri Shantilal Karsanbhai Satra PW 5 - Exh.13 and in that view of the matter, the court below ought to have come to the different conclusion.

#. On the other-hand, it is argued by the learned APP for the State that the appellant and the deceased are relative and are hailing from the same community and that they have terms to visit their house. It is also argued by the learned APP that there are evidences to that effect which show that lastly the accused was seen with the deceased, and, therefore, after considering the evidence to that effect i.e. evidence of PW 5 and 6 and other evidence on record, the court has rightly come to the above referred conclusion.

#. We have gone through the above referred evidence along with the other evidence on record, which have been shown to us by the learned counsel for the respective parties, which show that the appellant and the deceased were relatives and that the appellant was in village for 3 to 4 days and he was going towards the house of the deceased. There are sufficient evidence which links the accused with the crime in question and it has been fully discussed by the court below. It is true that it is a case of circumstantial evidence and therefore every link is required to be established for the purpose of completing the chain. We are of the considered opinion that the above referred evidence are sufficient evidence to connect the accused in crime in question. The prosecution has also produced and relied upon the other material evidence on record which connect the accused with the crime in question and therefore the contention raised by the learned counsel for the appellant that identification parade was not done does not survive in view of the fact that the appellant is belonging to the same village and previously also he was staying in the Jain boarding. In that view of the matter, once it is established that all are known to each other, the question of holding identification parade does not arise. As far as other evidences are concerned, it has been established from the evidence of the trustees of the boarding trust and also from the evidence of a teacher who has identified the accused as well as muddammal which

has been recovered and proved that it was belonging to the deceased and merely the proof of making ornaments has not been produced, the evidence to that effect cannot be rejected on that ground alone. Further, the act of the accused shows that he escaped from the boarding in the night itself and thereafter he went to Bombay. Even the evidence of Shila also supports the say of the prosecution that the accused has given golden ring to her which has been recovered and proved that it was belonging to the deceased. All the ornaments which have been taken from the house of the deceased have been recovered from the accused and the said aspect has been proved beyond reasonable doubt. Over and above, the strong circumstance is regarding wooden log which has been recovered at the instance of the accused and blood stain has been found upon the said wooden log. We have also gone through the panchanama to that effect which shows that it was not accessible or known to all concerned but it was in the special knowledge of the accused. There is also evidence of a shopkeeper from where the appellant has purchased bag who has also identified the accused. Under these circumstances, the prosecution has proved the link beyond the reasonable doubt and therefore it can be said that only the accused is responsible for the alleged act. Under these circumstances, the contention raised by the learned counsel for the appellant that the link has not been established and proved and that there are no evidence to connect the accused with the crime in question does not survive.

##. So far as the appeals filed by the State are concerned, looking to the nature of evidence, injury and keeping in mind all other aspects of the matter, the court below has rightly held that the accused is guilty of the offence punishable under Section 304 (I) of the I.P.C. and hence we do not incline to interfere with the same.

##. In view of the above facts and circumstances, these appeals require to be dismissed and accordingly they are dismissed.

(R.P.DHOLAKIA, J)

(SHARAD D DAVE, J)

(pathan)